

16A C.J.S. Constitutional Law § 795

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Constitutional Law

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PART III. Overview of Protected Personal Rights and Freedoms; Police Power

IX. Personal, Civil, and Political Rights and Freedoms

C. Personal Liberty

3. Right to Travel

b. Particular Applications

§ 795. Relating to child custody

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law  1280 to 1282, 1285 to 1288

Under some authority, a custodial parent's right to travel may be subject to the best interests of the child.

The right to travel, under some authority, carries with it a custodial parent's right to have his or her children move with him or her,¹ and a requirement that a parent with primary physical custody of a child establish that a move to another state is in the best interest of the child violates the parent's right to freedom of travel.²

Under some authority, when a custodial parent seeks to relocate, a court determining the best interest of a child involved in the custody dispute must weigh to the custodial parent's right to travel and the benefit to the child from remaining with the custodial parent, on the one hand, and the benefit to the child from the noncustodial parent's exercise of his or her right to maintain a close association and frequent contact with the child, on the other.³ Similarly, it has been said that when a parent claims that denial of the parent's request to relocate the child would violate the parent's federal constitutional right to travel, the child's interests are powerful countervailing considerations that cannot be swept aside as irrelevant, and the court should also balance the nonrelocating parent's

federal constitutional interest in parenting.⁴ Thus, the best interests of the child may override the right to travel.⁵ More specifically, if a judicial decision to restrain the custodial parent from relocating is based upon legitimate, case-specific reasons and evidence pertaining to the best interests of the child, the State's interference with the custodial parent's fundamental right of interstate travel may be justified in furtherance of the best interests of the child.⁶ In the absence of such reasons, however, there is no compelling state interest justifying a court in ordering a custodial parent to live in a state other than the one he or she chooses, and the order is an infringement of the parent's right of interstate travel.⁷

Other courts have held that a limitation on a custodial parent's ability to change the child's residence to another state,⁸ such as a court order effectively requiring a custodial parent who has moved from a state to return to the state or relinquish custody,⁹ does not impermissibly infringe upon the custodial parent's right to travel and that a court may premise the grant of primary custody to one parent on the other parent's desire to relocate with the child to another state.¹⁰ A statute authorizing a court prohibition against a custodial parent's moving out of state with the child has been held not to violate the custodial parent's right of interstate travel.¹¹

A noncustodial parent may be limited to in-state visitation of his or her children without violating the parent's constitutional right to travel.¹² Similar restrictions may validly form part of a joint custody plan.¹³ However, a mother's exercise of her constitutional right to travel within a state has been held an insufficient ground for a postdivorce order modifying a joint parenting plan under which the mother was the primary custodian and the father had visitation, to make the father the primary custodial parent of the children.¹⁴

Travel abroad.

A former spouse does not have a fundamental right to travel abroad with his or her children, for purposes of the other spouse's request for placement of travel and passport restrictions in a parenting plan; rather, the fundamental right to travel extends only to interstate travel.¹⁵

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Footnotes

- 1 Wyo.—Hanson v. Belveal, 2012 WY 98, 280 P.3d 1186 (Wyo. 2012).
- 2 N.M.—Jaramillo v. Jaramillo, 1991-NMSC-101, 113 N.M. 57, 823 P.2d 299 (1991).
- 3 Md.—Braun v. Headley, 131 Md. App. 588, 750 A.2d 624 (2000).
- 4 Ind.—Baxendale v. Raich, 878 N.E.2d 1252 (Ind. 2008).
- 5 Or.—In re Marriage of Fedorov, 228 Or. App. 50, 206 P.3d 1124 (2009).
R.I.—Africano v. Castelli, 837 A.2d 721 (R.I. 2003).
W. Va.—Rowsey v. Rowsey, 174 W. Va. 692, 329 S.E.2d 57 (1985).
- 6 Mont.—Matter of Custody of D.M.G., 1998 MT 1, 287 Mont. 120, 951 P.2d 1377 (1998).
- 7 Iowa—Wohlert v. Toal, 670 N.W.2d 432 (Iowa Ct. App. 2003).
Mont.—Matter of Custody of D.M.G., 1998 MT 1, 287 Mont. 120, 951 P.2d 1377 (1998).
- 8 Idaho—Weiland v. Ruppel, 139 Idaho 122, 75 P.3d 176 (2003).
N.D.—McRae v. Carbno, 404 N.W.2d 508 (N.D. 1987) (holding modified on other grounds by Stout v. Stout, 1997 ND 61, 560 N.W.2d 903 (N.D. 1997)).
- 9 Ind.—Clark v. Atkins, 489 N.E.2d 90 (Ind. Ct. App. 1986).
Minn.—LaChapelle v. Mitten, 607 N.W.2d 151 (Minn. Ct. App. 2000).
N.M.—Alfieri v. Alfieri, 105 N.M. 373, 1987-NMCA-003, 733 P.2d 4 (Ct. App. 1987).
Tex.—In re C.R.O., 96 S.W.3d 442 (Tex. App. Amarillo 2002).

- 10 Conn.—Azia v. DiLascia, 64 Conn. App. 540, 780 A.2d 992 (2001).
11 N.J.—Murnane v. Murnane, 229 N.J. Super. 520, 552 A.2d 194 (App. Div. 1989).
12 Wis.—In re Custody of L.J.G., 141 Wis. 2d 503, 415 N.W.2d 564 (Ct. App. 1987).
Wyo.—Trudeau v. Trudeau, 822 P.2d 873 (Wyo. 1991).
13 Mo.—In re C.H., 412 S.W.3d 375 (Mo. Ct. App. E.D. 2013), reh'g and/or transfer denied,
(Oct. 10, 2013) and transfer denied, (Nov. 26, 2013).
14 Mt.—In re Marriage of Guffin, 2009 MT 169, 350 Mont. 489, 209 P.3d 225 (2009).
15 Wash.—Katare v. Katare, 175 Wash. 2d 23, 283 P.3d 546 (2012), cert. denied, 133 S. Ct. 889,
184 L. Ed. 2d 661 (2013).

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